[2762] CTI-CONTAINER LEASING CORPORATION,
Plaintiff-Appellant,

v.

UITERWYK CORPORATION,
Defendant-Appellee.

No. 81-5758.
United States Court of Appeals,
Eleventh Circuit.

Sept. 13, 1982.

Delaware corporation sued Florida corporation alleging breach of leases for ocean cargo containers and other related equipment. Florida corporation moved to implead Iran and an alleged instrumentality of Iran as third-party defendants. The United States Department of Justice filed statements of interests and, in response, the United States District Court for the Middle District of Florida, at Tampa, Ben Krentzman, Chief Judge, without ruling on impleader motion, stayed the action. On appeal by the Delaware corporation, the Court of Appeals, Walter E. Hoffman, District Judge, sitting by designation, held that joinder of Iran and such alleged instrumentality was feasible, and District Court's objectives of adhering to Iran-United States Agreement and executive order suspending claims of American citizens against Iran and statements of interests filed by United States requesting stay could best be accomplished by denying motions for stay of entire action and joining third-party defendants but severing and staying third-party actions, and it was abuse of discretion to order stay of entire action.

Vacated and remanded.

Synopses, Syllabi and Key Number Classification
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The Synopses, Syllabi and Key Number Classification constitute no part of the opinion of the court.

CTI-Container Leasing Corp. v. Uiterwyk Corp. *(Cont.)*

1. Federal Courts ⇐ 559

Federal Court of Appeals had jurisdiction to review district court's order staying action against Florida corporation in response to statements of interests filed by the United States requesting stay pending determination by Iran-United States Claims Tribunal of its jurisdiction to hear the claims. Fed. Rules Civ. Proc. Rules 9(h), 14, 42(a), 28 U.S.C.A.; 28 U.S.C.A. §§ 1291, 1292(a)(1); Executive Order No. 12294, § 1 et seq., 50 U.S.C.A. § 1701 note.

2. Action ⇐ 68

District court's stay order as it affected Florida corporation's third-party claims against Iran and alleged instrumentality of Iran was mandatory in nature, such claims having been suspended by executive order because they were clearly within jurisdiction of Iran-United States Claims Tribunal, and district court was required to stay such claims although it nevertheless retained jurisdiction over them, but portion of order staying principal action by Delaware corporation against Florida corporation was discretionary only and was subject to review for abuse. 28 U.S.C.A. §§ 1291, 1292(a)(1); Executive Order No. 12294 § 1 et seq., 50 U.S.C.A. § 1701 note.

3. Federal Civil Procedure ⇐ 203

First step in indispensable party determination requires decision as to whether joinder of person in question is feasible. Fed. Rules Civ. Proc. Rule 19(b), 28 U.S.C.A.

CTI-Container Leasing Corp. v. Uiterwyk Corp. *(Cont.)*

4. International Law ⇐12

Executive order suspending claims of American citizens against Iran did not divest federal courts of jurisdiction. Executive Order No. 12294 § 1 et seq., 50 U.S.C.A. § 1701 note.

2763] **5. Action ⇐60, 68**

In action by Delaware corporation against Florida corporation wherein latter moved to implead Iran and alleged instrumentality of Iran, joinder of Iran and such alleged instrumentality was feasible, and district court's objectives of adhering to Iran-United States agreement and executive order suspending claims of American citizens against Iran and statements of interests filed by United States requesting stay could best be accomplished by denying motions for stay of entire actions and joining third-party defendants but severing and staying third-party actions, and it was abuse of discretion to order stay of entire action. Executive Order No. 12294, §1 et seq., 50 U.S.C.A. §1701 note; Fed. Rules Civ. Proc. Rules 19, 19(a), 42(b), 38 U.S.C.A.

Appeal from the United States District Court for the Middle District of Florida.

Before GODBOLD, Chief Judge, ANDERSON, Circuit Judge, and HOFFMAN*, District Judge.

WALTER E. HOFFMAN, District Judge:

In October 1980, CTI-Container Leasing Corporation (CTI) brought this action against Uiterwyk Corporation (Uiterwyk) alleging the breach of leases for ocean

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*Honorable Walter E. Hoffman, U.S. District Judge for the Eastern District of Virginia, sitting by designation.

CTI-Container Leasing Corp. v. Uiterwyk Corp. *(Cont.)*

cargo containers and other related equipment[1]. Jurisdiction was asserted under diversity and admiralty and CTI designated its claim as a maritime claim within the meaning of Fed.R.Civ.P.9(h). In February 1981, Uiterwyk moved to implead Iran and IEL as third-party defendants pursuant to Fed.R.Civ.P.14. In March 1981, the United States Department of Justice filed the first of several Statements of Interest which expressed the United States' position concerning litigation involving American nationals and Iranian entities as a consequence of the Iran-United States Agreement that obtained the release of the American hostages in January 1981. On June 19, 1981, the district court without having ruled on Uiterwyk's impleader motion, stayed this action with the following order:

In each of these cases[2] the United States has filed a
[2764] statement of interest, and subsequent to that, a supplemental statement of interest.

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1. CTI had previously brought the nearly identical cause of action based on the alleged breach of the same leases with slightly different monetary damages requested in the United States District Court for the District of Maryland in February 1980. CTI filed this action in the United States District Court for the Middle District of Florida while the Maryland action was pending.

Uiterwyk filed a third-party complaint against the Government of Iran (Iran) and Iran Express Lines (IEL) in the Maryland action. On January 21, 1982, the district court in Maryland severed and stayed the third-party claims against Iran and IEL. CTI's principal action against Uiterwyk was referred to a magistrate on April 12, 1982 for a hearing, report, and recommendation as to all dispositive pre-trial matters. On May 17, 1982, the magistrate in Maryland stayed the principal action of CTI against Uiterwyk pending our review of the stay issued in the Middle District of Florida.

2. In addition to Uiterwyk's impleader motion, it also filed separate actions against Iran and IEL, *Uiterwyk Corp. v. Iran Express Lines*, No. 81-107-Civ-T-K (M.D. Fla., filed Feb. 15, 1981); *Uiterwyk Corp. v. Iran Express Lines*, No. 81-108-Civ-T-K (M.D. Fla., filed Feb. 15, 1981). The June 19, 1981 stay order stayed these

The statement, in effect, is a motion for a stay of these proceedings, as a result of the agreement between the United States and the Government of Iran on January 19, 1981. 46 *Fed. Reg.* 7913-32 (January 23, 1981).

The Court is of the opinion that these cases should be, and they are, STAYED, pending determination by the Iran-United States Claims Tribunal of its jurisdiction to hear these claims. *See* Exec. Order No. 12,294, 46 *Fed. Reg.* 14,111 (Feb. 26, 1981)[3].

We now decide CTI's appeal of this stay order.

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actions along with the instant action, and another action against Uiterwyk, *Recovery Services Int'l Inc. v. Uiterwyk*, No. 81-39-Civ-T-K (M.D. Fla., filed Jan. 15, 1981).

Uiterwyk argued that the district court's "consolidated" stay order was, in effect, a Fed.R.Civ.P.42(a) consolidation. Uiterwyk argued that this consolidation properly placed the third-party defendants before the court. Such a conclusion would bolster Uiterwyk's argument concerning the validity of the stay order. However, we conclude that the district court's stay order was not a Rule 42(a) consolidation and our review of the stay order is limited to CTI's action against Uiterwyk.

3. Exec. Order No. 12,294, 46 Fed.Reg. 14,111 (1981) provides, in pertinent part:

> All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States. . . .

The authority of the President to suspend claims pursuant to Exec. Order No. 12,294 was upheld in *Dames & Moore v. Regan*, 453 U.S. 654, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981).

CTI-Container Leasing Corp. v. Uiterwyk Corp. *(Cont.)*

I. FACTS

CTI is a Delaware corporation with its principal place of business in New York and is a lessor of ocean carrier cargo containers. Uiterwyk is a Florida corporation and acted as agent for entities whose business included carriage of cargo in international trade.

CTI as lessor and Uiterwyk as lessee entered into a number of leases for ocean cargo containers and other related equipment which are the basis of this action. CTI alleged that Uiterwyk failed to pay its obligations under such leases. Uiterwyk argued that it entered into the leases as agent for IEL,[4] which was an Iranian corporate entity and is now an alleged instrumentality of Iran. Uiterwyk alleged that IEL transported the containers and related equipment to Iran where they remain in custody and control of IEL and Iran.

II. DISCUSSION

2. *A. Appellate jurisdiction.*

[1] Uiterwyk argued that this court lacks appellate jurisdiction to review the district court's stay order. CTI argued that the stay order is reviewable as a 28 U.S.C. §1291[5] "final decision" pursuant to *Hines v. D'Artois*, 531 F.2d 726 (5th Cir. 1976).[6]

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4. There was no indication in the leases in question that Uiterwyk was acting as agent for Iran, IEL, or any other party.

5. 28 U.S.C. §1291 provides:

> The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

6. We do not reach CTI's appellate jurisdiction arguments on 28 U.S.C. § 1292(a)(1) and the collateral order doctrine.

[2765] **CTI-CONTAINER LEASING CORP. v. UITERWYK CORP.**

In *Hines*, the Fifth Circuit found a stay order appealable because the order operated in practical effect as a "final order" under § 1291. The district court in *Hines sua sponte* stayed plaintiffs' 42 U.S.C. § 1983 employment discrimination action until plaintiffs initiated proceedings before the Equal Employment Opportunity Commission (EEOC) and pursued such proceedings to final administrative action. The Fifth Circuit held such order appealable because its practical effect placed plaintiffs out of court. See *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715 n.2, 82 S.Ct. 1294, 1296 n.2, 8 L.Ed.2d 794 (1962). The court concluded that the district court abused its discretion in staying the action until the conclusion of administrative proceedings and reversed the stay order.

The Fifth Circuit relied on the following factors to treat the stay order as appealable under § 1291. First, the court cited *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152-53, 85 S.Ct. 308,. 310-311, 13 L.Ed.2d 199 (1964), for the principles that "the requirement of finality is to be given a practical rather than a technical construction," and when "deciding the question of finality the most important competing considerations are the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other." (citations omitted). The court stated that such a practical construction of the finality doctrine "requires that when a plaintiff's action is effectively dead, the order which killed it must be viewed as final. Effective death should be understood to comprehend any extended state of suspended animation." *Hines, supra*, at 730; *see also McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982).

Second, the circumstances of the case reinforced

the court's conclusion that the stay order was a final order for § 1291 purposes. No EEOC complaint had been filed when the stay order was entered and a minimum delay of eighteen months was needed for final EEOC processing. The effect of such a "protracted and indefinite delay", *id.*, at 732, was to put plaintiffs effectively out of court.

Finally, the district court had not yet addressed the merits of the action when it entered the stay order, and therefore, "the inconvenience and costs of piecemeal review" were outweighed by "the danger of denying justice by delay." *Id.* The Fifth Circuit decided that these factors favored treating the stay as a final order, and we likewise feel that similar factors exist in the instant case that make this stay order a final order subject to appellate review.

The danger of denying justice by delay for CTI outweighs Uiterwyk's possible inconvenience and costs of piecemeal review. We have no way to estimate the months or even years that may pass before Uiterwyk's claims against Iran and IEL are decided by the Iran-United States Claims Tribunal ("Tribunal"), *see NIC Leasing, Inc. v. Uiterwyk Corp.*, No. 81 Civ. 3866, slip op. at 9 (S.D.N.Y. March 1, 1982), and CTI, an American corporation, should not be denied its day in court against Uiterwyk, another American corporation, because the Tribunal might at some future date assert jurisdiction over Uiterwyk's action against Iran and IEL.
[2766] Furthermore, Uiterwyk's argument that the delay from the stay order is outweighed by the possibility of inconsistent results from piecemeal review is without merit. CTI did not institute an action against Iran or IEL. Uiterwyk's claims against these two parties are contingent upon a finding in the district court of Uiterwyk's liability to CTI before the Tribunal can accurately enter a judgment in the Uiterwyk and Iran-IEL dispute.

By staying the action pending the Tribunal's determination of its jurisdiction over Uiterwyk's claim for a protracted and indefinite period, the district court placed CTI in an "extended state of suspended animation." *Hines, supra,* at 730. The practical effect of the stay order placed CTI "effectively out of court" and for such reason we hold that the stay order was a "final" order subject to appellate review under § 1291.

B. *Merits of the stay order*

[2] CTI and Uiterwyk disagree as to whether the district court's stay order was a mandatory or discretionary stay. We conclude that the stay order as it affected Uiterwyk's third-party claims against Iran and IEL was mandatory in nature because such claims were suspended by Executive Order No. 12,294 as they are clearly within the Tribunal's jurisdiction. The district court was required to stay those claims, although it nevertheless retained jurisdiction over them. *See Dames & Moore, supra,* 453 U.S. at 684, 101 S.Ct. at 2989. We agree with the district court's stay order as it pertains to the stay of the third party action, but reach a contrary conclusion concerning the stay of the principal action of CTI against Uiterwyk. This portion of the stay order was discretionary in nature as the district court was not required to stay an action between two American corporations.[7]

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7. As the United States stated in its Second Supplemental Statement of Interest, which was filed in the Maryland action, only claims of nationals of the United States against Iran and claims of nationals of Iran against the United States are within the Tribunal's jurisdiction. Therefore, we agree with the view of the United States that CTI's claims against Uiterwyk are not within the Tribunal's jurisdiction and not suspended by Executive Order 12,294. In addition, the United States also stated that a stay of this entire action *may* be appropriate; we disagree with this conclusion for the reasons stated herein.

CTI-Container Leasing Corp. v. Uiterwyk Corp. *(Cont.)*

The inherent discretionary authority of the district court to stay litigation pending the outcome of related proceeding in another forum is not questioned. *See generally Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 665, 98 S.Ct. 2552, 2558, 57 L.Ed.2d 504 (1978); *Landis v. North American Co.*, 299 U.S. 248, 255, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936); *P. P. G. Industries Inc. v. Continental Oil Co.*, 478 F.2d 674 (5th Cir. 1973). Our review of such an exercise of discretion is limited to an abuse of discretion standard. *See McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982).

In *McKnight*, the Fifth Circuit recently vacated a stay order as an abuse of discretion because the stay continued an action for an indefinite period of time. In *McKnight*, the court stated:

> The district court has a general discretionary power to stay proceedings before it in the control of its docket and in the interests of justice. Nevertheless, stay orders will be reversed when they are found to be immoderate of an indefinite duration. In *Landis v. North American Co.*, 299 U.S. 248 [57 S.Ct. 163, 81 L.Ed. 153] (1936), the Supreme Court held that a "stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description."

667 F.2d at 479 (citations omitted).

[2767] It is difficult to accurately predict the time that CTI will be forced to stand aside if it is required to await the Tribunal's determination of its jurisdiction to hear these claims, but it can safely be described as an indefinite period of time. We cannot uphold such an indefinite or immoderate stay despite Uiterwyk's arguments to the contrary. We, therefore, agree with the procedural posture taken by other courts in similar litigation arising out of Uiterwyk's involvement with Iran and IEL. *See NIC*

Leasing Inc. v. Uiterwyk Corp., No. 81 Civ. 3866 (S.D.N.Y. March 1, 1982); *Cotco Leasing Co. v. Uiterwyk Corp.*, No. 80-706 (E.D.Pa. Nov. 9, 1981); *Xtra, Inc. v. Uiterwyk Corp.*, No. 79-1021-Civ.-T-H (M.D. Fla. Aug. 25, 1981). *But see Itel Corp. v. M/S Victoria U*, No. 80-2328 (E.D.La. Sept. 23, 1981), *appeal docketed*, No. 82-3129 (5th Cir. Feb. 24, 1982).[8] These courts that were faced with third party complaints have severed and stayed the third-party actions against Iran and IEL while allowing the principal actions against Uiterwyk to proceed to trial.

Uiterwyk argued that the stay of the entire action should be affirmed because: (1) it will be prejudiced in developing its evidence[9] without the presence of IEL and Iran who are necessary for a comprehensive disposition at one time of the rights of the parties to litigation arising out of the same facts; (2) it will be subjected to significant costs of duplicative proceedings before the district court and the Tribunal; and (3) IEL and Iran are indispensable parties to the litigation.

First, Uiterwyk's argument that it may be prejudiced in developing evidence to support its agency de-

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8. A stay was granted in the *Itel* case, but *Itel* is distinguishable because no third-party action was filed in that case. CTI argued that plaintiff's cause of action in *Itel* "was based on leases showing IEL as lessee; Uiterwyk as lessee; IEL c/o Uiterwyk as lessee; and IEL c/o Nippon Umpansha, Ltd. as lessee." Reply Brief for Appellant at 22. Uiterwyk did not dispute this assertion and Uiterwyk's counsel admitted at oral argument that *Itel* was not a similar case, but only cited as an example of possible prejudice that might ensue if the action was not stayed. Indeed, possible prejudice might ensue in an action when named defendants-lessees-agents are not before the court because of Executive Order 12,294. However, this is not the situation in the present action and, therefore, *Itel* is inapposite to these circumstances.

9. Although not emphasized in its brief, Uiterwyk asserted at oral argument, that its status as agent for IEL provides a meritorious defense to CTI's claims and such status cannot be proved without the presence of IEL and Iran at trial.

fense without the third-party defendants' presence is not a determinative factor in our decision concerning the stay. An alleged agency agreement between Uiterwyk and IEL is not at issue; it is the contract between CTI and Uiterwyk that is the focus in the principal action. Uiterwyk also will not be hampered by the third-party defendants' absence in attempting to substantiate its impossibility of performance and force majeure defenses. The historical context of the Iran-United States Agreement has not been disputed and CTI has not questioned the factual basis for these affirmative defenses.

Second, Uiterwyk will not be subjected to any undue hardship of duplicative costs by proceeding with the principal action. It will not suffer significant overlapping costs and preparation for proceeding in the Tribu-
768] nal because we agree with the district court that the third-party claims should be stayed because such claims are within the Tribunal's jurisdiction. Furthermore, any extra costs Uiterwyk might incur do not outweigh the serious harm to CTI if it is compelled to stand aside for an indeterminate period of time to await the Tribunal's decision.

[3] Third, Uiterwyk argued that Iran and IEL are indispensable parties under F.R.Civ.P. 19(b) because CTI's claims are inextricably related to Uiterwyk's claims against IEL and Iran. It is not necessary to analyze the factors enumerted in Rule 19(b)[10] to determine

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10. Fed.R.Civ.P. 19 provides, in pertinent part:
(a) Persons To Be Joined If Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to

if IEL and Iran are indispensable parties, because "Rule 19(b) deals with the determination a court should make whenever joinder of an interested person is not feasible." *Gertner v. Hospital Affiliates International Inc.*, 602 F.2d 685, 688 (5th Cir. 1979). Hence, the first step in an indispensable party determination requires a decision as to whether joinder of the person in question is feasible. *See Challenge Homes, Inc., v. Greater Naples Care Center, Inc.*, 669 F.2d 667 at 669 (11th Cir. 1982).

[4] The district court did not rule on Uiterwyk's motion to join IEL and Iran as third-party defendants and CTI argued that such joinder would deprive the court of jurisdiction under Executive Order 12,294 and violate Rule 19(a). However, we agree with Uiterwyk's argument on this point that "Executive Order 12,294 purports only to 'suspend' the claims not divest the fed-

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a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination By Court Whenever Joinder Not Feasible. If a person as described in subdivison (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

eral court of 'jurisdiction.' " *Dames & Moore v. Regan, supra,* 453 U.S. at 684, 101 S.Ct. at 2989.

The court in *Challenge Homes, supra,* stated that in making the decision whether the party in question should be joined if feasible under the Rule 19(a), "pragmatic concerns, especially the effect on the parties and the litigation, control." *Challenge Homes, supra,* at 669 (citations omitted). We conclude, viewing the Rule
769] 19(a) factors in light of pragmatic concerns, that joinder of IEL and Iran is feasible and was also the course followed by other courts faced with the same decision. *See NIC Leasing Corp., supra; Cotco Leasing, Inc., supra; Xtra, Inc., supra.*

III. CONCLUSION

[5] We feel that the district court's objectives of adhering to the Iran-United States Agreement, Executive Order 12,294, and the Statements of Interests filed by the United States can best be accomplished by following the paths taken by the courts in the *NIC Leasing*, *Cotco Leasing*, and *Xtra* cases. In these cases, Uiterwyk's motions for a stay of the entire actions were denied and the third party defendants were joined, but such third-party actions were severed under Rule 42(b), and stayed pursuant to Executive Order No. 12,294. The parties were directed to proceed with their respective principal actions. Therefore, we conclude that district court abused its discretion when it ordered a stay of this entire action. We vacate the district court's stay order and remand the action to the district court for proceedings not inconsistent with this opinion.[11]

VACATED AND REMANDED.

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11. We take cognizance of the fact that in the substantially identical action in Maryland, *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, No. JH-80-313 (D. Md., filed Feb. 8, 1980), the district court severed and stayed the third-party action and referred the action to a magistrate. The magistrate subsequently stayed the principal action pending our decision. *See*, note 1, *supra*. We, in effect, approve of the action taken by the district court in Maryland. However, upon remand of this action to the Middle District of Florida, it remains to be decided by the two district courts as to which court will proceed to trial with the principal action. Clearly, the same parties in substantially the exact same litigation should not be permitted to proceed simultaneously in two separate district courts, but we leave the decision of which district court will proceed to trial to the discretion of the district courts involved.

IN THE UNITED STATES DISTRICT COURT
For The Middle District of Florida
Tampa Division

CTI-CONTAINER LEASING CORPORATION, *Plaintiff*	:	
vs	:	Case No. 80-1113-Civ-T-K
UITERWYK CORPORATION *Defendant.*	:	
	:	
RECOVERY SERVICES INTERNATIONAL INC., *Plaintiff*	:	
vs	:	Case No. 81-39-Civ-T-K
IRAN EXPRESS LINES AND UITERWYK CORPORATION *Defendants*	:	
	:	
UITERWYK CORPORATION *Plaintiff*	:	
vs	:	Case No. 81-107-Civ-T-K
IRAN EXPRESS LINES AND THE GOVERNMENT OF IRAN *Defendants*	:	
	:	
UITERWYK CORPORATION, et al *Plaintiff*	:	
vs	:	Case No. 81-108-Civ-T-K
IRAN EXPRESS LINES AND THE GOVERNMENT OF IRAN *Defendants*	:	
	:	

ORDER

In each of these cases the United States has filed a statement of interest, and subsequent to that, a supplemental statement of interest.

The statement, in effect, is a motion for a stay of these proceedings, as a result of the agreement between the United States and the Government of Iran on January 19, 1981. 46 *Fed. Reg.* 7913-32 (January 23, 1981).

The Court is of the opinion that these cases should be, and they are, STAYED, pending determination by the Iran-United States Claims Tribunal of its jurisdiction to hear these claims. *See* Exec. Order No. 12,294, 46 *Fed. Reg.* 14,111 (Feb. 26, 1981).

IT IS SO ORDERED at Tampa, Florida, this 19 day of June, 1981.

Ben Krentzman
UNITED STATES DISTRICT JUDGE

United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

No. 81-5758

D.C. Docket No. 80-1113-CIV-T-K

CTI-CONTAINER LEASING CORPORATION,

Plaintiff-Appellant,

versus

UITENWYK CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

Before GODBOLD, Chief Judge, ANDERSON, Circuit Judge, and HOFFMAN*, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, VACATED; and that this cause be, and the same is hereby, REMANDED to said District Court in accordance with the opinion of this Court;

It is further ordered that costs on appeal will be taxed at a later date.

September 13, 1982

*Honorable Walter E. Hoffman, U.S. District Judge for the Eastern District of Virginia, sitting by designation.

ISSUED AS MANDATE: NOV 15 1982

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-5758

CTI-CONTAINER LEASING CORPORATION,
Plaintiff-Appellant,

versus

UITERWYK CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

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ON PETITION FOR REHEARING
AND SUGGESTION FOR REHEARING EN BANC
(Opinion September 13, 11 Cir., 1982, F.2d).

(October 18, 1982)

Before GODBOLD, Chief Judge,
ANDERSON, Circuit Judge and
HOFFMAN*, District Judge

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled

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* Honorable Walter E. Hoffman, U.S. District Judge for the Eastern District of Virginia, sitting by designation.

on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

Entered for the Court:

John Godbold
United States Circuit Judge

EXECUTIVE ORDER 12294

SUSPENSION OF LITIGATION AGAINST IRAN

By the authority vested in me as President by the Constitution and statutues of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which were based the declarations of national emergency in Executive Order No. 12170 issued November 14, 1979, and in Executive Order No. 12211, issued April 17, 1980, in light of the agreement with the Government of Iran, as reflected in the Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of United States diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, in order to implement Article II of the Declaration of Algeria concerning the settlement of claims and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such

claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

Section 2. Nothing in this Order shall require dismissal of any action for want of prosecution.

Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

Section 5. Nothing in this Order shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

Section 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending

or hereafter commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

Section 7. The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act and by 22 U.S.C. §1732 to carry out the purposes of this Order.

Section 8. Executive Order Nos. 12276 through 12285 of January 19, 1981, are ratified.

This Order shall be effective immediately and copies shall be transmitted to the Congress.

Ronald Reagan
Barbara E. Sukie
Certified to be a True Copy.

THE WHITE HOUSE
February 24, 1981.

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran. On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two governments:

GENERAL PRINCIPLES

The undertakings reflected in this Declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

B. It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the Government of each

party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

Point I: Non-Intervention in Iranian Affairs

1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

Points II and III: Return of Iranian Assets and Settlement of U.S. Claims

2. Iran and the United States (hereinafter "the parties") will immediately select a mutually agreeable central bank (hereinafter "the Central Bank") to act, under the instructions of the Government of Algeria and the Central Bank of Algeria (hereinafter "The Algerian Central Bank") as depositary of the escrow and security funds hereinafter prescribed and will promptly enter into depositary arrangements with the Central Bank in accordance with the terms of this declaration. All funds placed in escrow with the Central Bank pursuant to this declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set forth in this Declaration and in the Declaration of the Democratic and Popular Republic of Algeria concerning the settlement of claims

by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter "the Claims Settlement Agreement") are separately set forth in certain Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Democratic and Popular Republic of Algeria.

3. The depositary arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately all monies or other assets in escrow with the Central Bank pursuant to this declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall have the right on seventy-two hours notice to terminate its commitments under this declaration.

If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within the seventy-two hour period of notice, the Algerian Central Bank will thereupon instruct the Central Bank to transfer such monies and assets. If the seventy-two hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the Central Bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this declaration shall be of no further force and effect.

ASSETS IN THE FEDERAL RESERVE BANK

4. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank

of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3 above.

ASSETS IN FOREIGN BRANCHES OF U.S. BANKS

5. Commencing upon the completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after November 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through December 31, 1980, to be held by the Central Bank, to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with Paragraph 3 of this Declaration.

ASSETS IN U.S. BRANCHES OF U.S. BANKS

6. Commencing with the adherence by Iran and the United States to this declaration and the claims settlement agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing security account specified in that agreement and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank, within six months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3.

7. As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of $1 billion. After the $1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below $500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of $500 million in the account. The account shall be so maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran.

OTHER ASSETS IN THE U.S. AND ABROAD

8. Commencing with the adherence of Iran and the United States to this declaration and the attached claims settlement agreement and the conclusion of arrangements for the establishment of the security account, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in Paragraph 5 and 6 above, to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this declaration and the attached claims settlement agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

NULLIFICATION OF SANCTIONS AND CLAIMS

10. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date.

11. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and preclude the prosecution against Iran in the courts of the United States of any pending or future claim asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

Point IV: Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the

final judgment to the extent that the property or assets exist within the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

SETTLEMENT OF DISPUTES

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of this declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. Any decision of the tribunal with respect to such dispute, including any award of damages to compensate for a loss resulting from a breach of this declaration or the claims settlement agreement, may be enforced by the prevailing party in the courts of any nation in accordance with its laws.

Initialed on January 19, 1981

by _____
Warren M. Christopher

Deputy Secretary of State of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA CONCERNING THE SETTLEMENT OF CLAIMS BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN.

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

ARTICLE I

Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this agreement shall be submitted to binding third-party arbitration in accordance with the terms of this agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

ARTICLE II

1. An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other

measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3. The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981, over any dispute as to the interpretation or performance of any provision of that declaration.

ARTICLE III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the parties or by the Tribunal to ensure that this agreement can be carried out. The UNCITRAL rules for appointing members of three-member Tribunals shall apply *mutatis mutandis* to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this agreement shall be presented to the Tribunal either by claimants themselves, or, in the case of claims of less than $250,000, by the Government of such national.

4. No claim may be filed with the Tribunal more than one year after the entry into force of this agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

ARTICLE IV

1. All decisions and awards of the Tribunal shall be final and binding.

2. The President of the Tribunal shall certify, as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January 19, 1981, when all arbitral awards under this agreement have been satisfied.

3. Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

ARTICLE V

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

ARTICLE VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.

2. Each government shall designate an agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communications directed to it or to its nationals, agencies, instrumentalities, or entities in connection with proceedings before the Tribunal.

3. The expenses of the Tribunal shall be borne equally by the two governments.

4. Any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon the request of either Iran or the United States.

ARTICLE VII

For the purposes of this agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively,

natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity, is not itself entitled to bring a claim under the terms of this agreement. Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.

3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

4. The "United States" means the Government of the United States, any political subdivision of the United States, any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

ARTICLE VIII

This agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the agreement.

Initialed on January 19, 1981

by _____

Warren M. Christopher

Deputy Secretary of State
of the Government of the
United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria.

AGENCY AGREEMENT

Agency agreement made and entered into between Iran Express Lines ("Principal") and Uiterwyk Corporation ("Agent").

I. SCOPE

Principal hereby appoints Agent as its General Agent in the U.S. for Iran Express Lines between the U.S. Gulf and Atlantic Coast ports and various ports in the Persian Gulf for the conduct of business of all its vessels whether owned, chartered and/or managed, upon the terms and conditions hereinafter set forth.

II. GENERAL AGENCY

Agent agrees to perform services for Principal as herein provided. Agent will perform according to the terms and conditions of the Agreement and such instructions as Principal may give from time to time. Such periodic instructions must reach Agent by telex at least three full days prior to schedule implementation in order to be considered timely. Any additional costs incurred due to untimely delivery of instructions by Principal will be for Principal's account.

Agent will not accept, without prior concurrence of Principal, any agency for the territory described in Article I which will compete with Principal's services. Principal agrees to assign to Agent similar representation as defined in Article I of any future services established or vessel activities controlled by itself or affiliated or associated organizations.

Owner hereby undertakes to remit to Agent, in advance and promptly upon request, any and all funds as may be required by Agent to perform his duties and obligations as defined in this Agreement.

Agent shall have the right to appoint sub-agents to perform any of the duties and/or obligations of Agent in any

or all areas subject to this Agreement. Prior consent of Principal shall be required for appointment of a sub-agent, but such consent may be withheld only where Principal has clearly justifiable commercial reasons.

III. AGENCY FUNCTIONS

A. Agent shall attend to the berthing, loading, discharging and dispatch of all vessels in accordance with the instructions of Principal. Agent shall arrange for berthing, stowage, clerking, checking, receiving and delivering cargoes and shall generally perform all functions customarily undertaken by berth agents. Loading and discharging berths shall be selected by Agent with the advice of Principal. All contracts for stevedoring, supplies and other services to be performed for the vessels to be arranged by Principal. Prior consent of Principal is required for any advance made by Agent to Master, provided that Agent shall be reimbursed by Principal for any advances made to Master in any situation where prior approval of Principal is not feasible due to the dictates of time or communications.

B. Agent shall execute freight booking contracts on behalf of Principal and shall issue or cause to be issued to shippers of cargo dock permits, dock receipts and bills of lading for the carriage of goods on vessels covered by this Agreement. Agent shall report regularly to Principal as to cargo bookings, position of vessels, amendment of port tariff and other charges. Freight booking contracts shall specify that all freight be assessed in accordance with tariff regulations, discountless, ship and/or cargo lost or not lost. The bills of lading shall be in such form as prescribed by Principal, but Agent shall always exercise due diligence to see that all bills of lading are properly issued in accordance with applicable law. Agent shall assist Principal when called upon in the handling, adjustment and settlement of any claims.

C. Agent shall collect on behalf of Principal any monies due Principal by reason of Agents activities under this Agreement. Agent shall have the right to deduct from any monies collected on behalf of Principal any sums owed by Principal to Agent. In addition agent shall, for Principal's account, pay necessary disbursements and an accounting shall be rendered by Agent for each vessel at each port as soon as practicable.

IV. REMUNERATION

A. Agent shall be reimbursed at actual cost for all expenses properly chargeable to the account of the vessels, including but not limited to inward and outward port charges, towage, stevedoring, clerking, tallying, watching, wharfage, preparation of shipping documents, cablegrams, telegrams, teletypes and long distance telephone calls necessary for the fulfillment of Agent's obligations and duties under this Agreement.

B. Agent shall receive for services the following:
General Agency Commission:

Outbound	7-½% Total Ocean Freight
Inbound	3-¾% Total Ocean Freight

V. INDEMNITY

Principal shall indemnify, hold harmless and defend Agent against any and all claims and demands (including, but not limited to, costs and attorney's fees in defending any such claim or demand regardless of its validity) of whatever nature or kind and by whomsoever asserted which Agent may incur or suffer by reason of its performance of this agreement.

Agent shall not be responsible for loss or damage incurred by Principal except where such loss or damage arises as a result of the gross negligence of Agent.

VI. CONFIDENTIALITY

Agent undertakes not at anytime to divulge or make known any information concerning the secrets, accounts or dealings of or in any way related to the business of Principal unless otherwise instructed by owner or required to divulge such information under penalty of law.

VII. ARBITRATION

In the event of any claim or dispute arising out of or relating to any provision of this Agreement the parties will diligently attempt an amicable resolutoin of the claim or dispute. In the event that the claim or dispute is not so resolved, it will be submitted for final settlement to a commercially acceptable arbitration procedure.

VIII. TERMINATION

This agreement will be effective from the date last written until terminated as hereinafter provided:

A. Either party shall have the right to terminate this Agreement at any time upon thirty (30) days written notice of cancellation to the other party, such cancellation to be effective thirty (30) days from receipt of such notice.

B. Should Agent abandon or terminate berth services operations in the ports specified in Article I of this Agreement.

Any termination of this Agreement shall be without prejudice to the rights and claims of the parties between themselves in respect of all matters and things arising prior to such termination.

This agreement shall cancel, revoke and supercede any previous or existing agreement between the parties hereto, whether formal or informal.

IX. ADDITIONAL SECURITY

It is expressly agreed that Agent does not rely solely on the credit of Principal for repayment of disbursements made hereunder. As further security for repayment of said disbursements, Agent is hereby granted a maritime lien for disbursements made to any vessel owned, chartered or managed by Principal.

In Witness Whereof the parties have signed this Agreement on the 14th, day of July, 1978.

Principal: _____

Robert H. Uiterwyk
Deputy to the
Managing Director
Iran Express Lines

Agent: _____

Hendrik Uiterwyk
Executive Vice-President
Uiterwyk Corporation

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BACKER NAVID, d/b/a/ NAVID BROTHERS TRADING FIRM, an Iranian National,	)	
Plaintiff,	)	
vs.	)	Case No. 81-136-CIV-T-WC-K
M. CUNLIFFE-FRASER as representative of certain UNDERWRITERS AT LLOYDS, THREADNEEDLE INSURANCE CO., et al.,	)	
Defendants.	)	

ANSWER OF DEFENDANT
IRAN EXPRESS LINES, LIMITED

Defendant, IRAN EXPRESS LINES, LIMITED, by and through its undersigned attorneys answers Plaintiff's Amended Complaint as follows:

1. Defendant denies the first sentence of paragraph 1 and is without information sufficient to form a belief as to the truth of the remainder of paragraph 1 and, therefore, denies the same.

2. Defendant is without information sufficient to form a belief as to the truth of the allegations of numbered paragraphs 2 and 3 and, therefore, denies the same.

3. Defendant denies numbered paragraph 4.

4. Defendant is without information sufficient to form a belief as to the truth of the allegations of the first and third sentences in numbered para-

graph 5 and, therefore, denies the same. Further, Defendant denies the allegation in the second sentence in numbered paragraph 5.

5. Defendant admits the allegations contained in numbered paragraph 6 however it is without information sufficient to form a belief as to the truth of the allegation that SMP is an Iranian corporation maintaining business in Tehran.

6. Defendant is without information sufficient to form a belief as to the truth of the allegations of numbered paragraphs 7 and 8 and, therefore, denies the same.

7. Defendant admits that it entered into an agreement with Plaintiff for the carriage by sea of shipment of household air conditioners on or about December 14, 1977 as contained in the allegations of numbered paragraph 9, however, it is without information sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the same. Further, Defendant admits that Exhibit B is silent as the mode of carriage but denies the remainder of the allegations of the last sentence in numbered paragraph 9.

8. Defendant is without information sufficient to form a belief as to the truth of the allegations of numbered paragraphs 10, 11 and 12, and, therefore, denies the same. Further, Defendant cannot admit nor deny the allegation that Exhibit C is a "clean" under deck ocean bill of lading until the complete bill is produced.

9. Defendant denies the allegations of numbered paragraphs 13 and 14.

10. Defendant is without information sufficient to form a belief as to the truth of the allegations of numbered paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, and therefore, denies the same.

11. Defendant denies the allegations of numbered paragraphs 31, 32, and 33.

12. Answering numbered paragraph 34, Defendant incorporates the same answer it made to paragraphs 1-33.

13. Defendant denies the allegations of numbered paragraph 35.

14. Answering numbered paragraph 36, Defendant incorporates the same answer it made to paragraphs 1-33.

15. Defendant denies the allegations of numbered paragraph 37.

16. Answering numbered paragraph 38, Defendant incorporates the same answer as it made to paragraphs 1-33.

17. Defendant is without information sufficient to form a belief as to the truth in paragraph 39 that M/V Margitta was under charter to Defendant. Further, Defendant denies the remainder of paragraph 39.

18. Defendant denies the allegations of numbered paragraphs 40 and 41.

19. Counts IV - XI seek recovery against the other Defendants, and therefore, no response is necessary.

AFFIRMATIVE DEFENSES

21. Defendant hereby gives notice, pursuant to Federal Rule of Civil Procedure 44.1, that it intends to raise an issue as to the applicability of the law of Iran; more specifically Law 6738 enacted June of 1979 in Iran which required private corporations including Defendant herein to be administered by the Government of The Islamic Republic of Iran. Defendant may raise other Iranian law.

22. Defendant is a sovereign entity immune from the jurisdiction of this Court under the Treaty of Amity, August 15, 1955, United States — Iran, 8 U.S.T. 899, T.I.A.S. No. 3835 and under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602 *et seq.* (1976)("FSIA").

23. The property of Defendant is immune from attachment, arrest and execution under the Treaty of Amity and under FSIA, 28 U.S.C §§ 1330(a), 1604, 1609.

24. Service of process on Defendant is insufficient. Section 1608(b) of the FSIA establishes the only methods whereby service of process may be made on an "agency or instrumentality of a foreign state". Plaintiffs have made no attempt to serve process on Defendant in a manner that complies with the requirements of that statute.

25. This Court lacks personal jurisdiction over Defendant pursuant to 28 U.S.C. §§ 1330(b).

26. As Plaintiff and Defendant are foreign entities and the letter agreement attached to the Complaint as Exhibit B was executed in a foreign country, this Court lacks jurisdiction over the subject matter in light of the fact Plaintiff has failed to make a showing that the remedies of Iran are unavailable.

27. This action should be dismissed or transferrred pursuant to the doctrine of form nonconveniens.

28. Upon information and belief, the second page of the bill of lading may provide that disputes arising thereunder are to be settled in arbitration or in a form other than the United States courts. Further, there may be other valid defenses contained in such bill which won't be known until production.

29. Plaintiffs' claims are barred by laches.

30. Plaintiffs' cause of action is barred by the applicable statutes of limitation.

31. Any damage to the aforementioned shipment, which is denied, was caused by the act or omission of the shipper of the goods or its agents or representatives and accordingly this Defendant is not liable therefore. If a principal agent relationship is found to exist between the Defendant and Uiterwyk Corporation, Defendant cannot be liable for the allegations against Uiterwyk since Uiterwyk Corporation's acts or contracts were not within the scope of its actual or apparent authority and were outside its scope of employment with Defendant.

32. If Uiterwyk Corporation files a claim with the United States - Iran Claims Tribunal, Defendant reserves its right to bring a counterclaim pursuant to the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States of America and the Islamic Republic of Iran adhered to by the United States and Iran on January 19, 1981.

33. Any loss or damage to such shipment was due to perils, dangers, and accidents of the sea for which the Defendant is not liable.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer has been furnished by United States mail to John I. Van Voris, Esquire, Post Office Box 3324, Tampa, Florida, 33601 this 2d day of October, 1981.

Jeffrey S. Goldman, Esquire